

STATE OF MICHIGAN
COURT OF APPEALS

MARK CHURELLA, SUSAN RADTKE and
PETER TREBOLDI,

UNPUBLISHED
November 12, 1999

Plaintiff-Appellants,

v

No. 204840
Wayne Circuit Court
LC No. 96-635359

PIONEER STATE MUTUAL INSURANCE
COMPANY, DALE LITTLE, HARLAN
GINGRICH, GORDON GINGRICH, ROBERT
WEST, CARLETON WILSON, MILTON
TIMMERMAN, DAN CZMER and JACK
D'ARCY,

Defendant-Appellees.

and

ATTORNEY GENERAL, COMMISSIONER OF
INSURANCE, and NATIONAL ASSOCIATION
OF MUTUAL INSURANCE COMPANIES,

Intervening Defendants-Appellees.

MARK CHURELLA, SUSAN RADTKE and
PETER TREBOLDI,

Plaintiff-Appellants,

No. 209998
Wayne Circuit Court
LC No. 96-635359 CZ

v

PIONEER STATE MUTUAL INSURANCE
COMPANY, DALE LITTLE, GORDON H.
GINGRICH, HARLAN GINGRICH, ROBERT
WEST, CARLETON WILSON, MILTON

TIMMERMAN, DAN CZMER and JACK
D'ARCY,

Defendants-Appellees,
and

ATTORNEY GENERAL, COMMISSIONER OF
INSURANCE, and NATIONAL ASSOCIATION
OF MUTUAL INSURANCE COMPANIES,

Intervening Defendants-Appellees.

Before: Gribbs, P.J., and O'Connell and R.B. Burns,* JJ.

PER CURIAM.

This case involves consolidated appeals. Plaintiffs, policyholders of defendant Pioneer State Mutual Insurance Company, initiated the underlying action to compel defendant to distribute its surplus assets to its policyholders. Plaintiffs appeal by right from the circuit court order dismissing their class action lawsuit for lack of subject matter jurisdiction. Plaintiffs also appeal by leave granted the circuit court order requiring plaintiffs to pay costs and fees. We affirm in part and reverse in part.

First, the trial court did not err in concluding that it lacked subject-matter jurisdiction to hear this case.¹ The insurance commissioner's authority comes solely from the Legislature. *Blue Cross & Blue Shield of Michigan v ins Comm'r*, 403 Mich 399, 431-432; 270 NW2d 845 (1978). The insurance industry is heavily regulated and the insurance commissioner has broad authority to ensure that a mutual insurance company is safe, reliable and entitled to public confidence. Among other activities, the insurance commissioner is authorized by statute to promulgate rules to regulate mutual insurance companies and to determine the safety and reliability of a mutual insurance company. MCL 500.210; MSA 24.1210; MCL 500.403; MSA 24.1403. The insurance commissioner is required by statute to periodically examine the insurer's "books, records documents and papers" in order to protect the policyholders' interests. MCL 500.222; MSA 24.1222. The issues raised by plaintiffs regarding funds held by defendant necessarily involve consideration of the company's safety and reliability and are within the statutory authority of the insurance commissioner. The insurance commissioner has jurisdiction to determine what, if any, distribution of defendant's alleged surplus would be appropriate. As in the case of our Supreme Court's unanimous decision in *In re Wirsing*, 456 Mich 467,474; 573 NW2d 51 (1998), the statute in this case "plainly contemplates" this result. The trial court's dismissal of this case was not improper.

Plaintiffs also contend that the trial court improperly awarded costs and fees in this matter. We agree. The trial court specifically declined to find plaintiffs' claim frivolous and we find the award of sanctions inappropriate in this novel and complex action. Moreover, we find no statutory authority for the trial court's award of the costs for defendants' letter to its policyholders, the services of a public

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

relations firm, the services of an investigator, or the attorney fees for the intervening defendant insurance commissioner.

In light of our decision, we need not address plaintiffs' remaining issues.

The trial court's grant of summary disposition is affirmed. The trial court's award of costs and fees is reversed.

/s/ Roman S. Gibbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns

¹ Our consideration of intervening defendants' claim of primary jurisdiction is effectively precluded because it was not raised below as an affirmative defense. See *Travelers Insurance Co v Detroit Edison Co.*, ___ Mich App ___; ___ NW2d ___ (1999) (Docket No. 207110, issued 9-14-99).